

AMTA

American Mobile Telecommunications Association

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 29 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PRESIDENT & CEO

Alan R. Shark, CAE

GENERAL COUNSEL

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez

September 29, 1995

EX PARTE OR LATE FILED

via Hand Delivery

Rosalind K. Allen, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, 7th floor
Washington, DC 20554

Re: 800 MHz SMR
PR Docket No. 93-144
Ex Parte Presentation

Dear Ms. Allen:

The American Mobile Telecommunications Association, Inc. ("AMTA" or the "Association"), in response to the Wireless Telecommunications Bureau's ("WTB" or the "Bureau") request of September 18, 1995, and pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC or the "Commission") Rules and Regulations (47 C.F.R. § 1.1206), respectfully submits this *ex parte* presentation concerning the above-referenced docket. Two copies of this presentation are being filed with the Commission's Secretary.

As the nationwide non-profit trade association serving the specialized wireless communications industry, particularly the specialized mobile radio (SMR) community, AMTA has been deeply involved in all stages of this proceeding.¹ Since the release of the FCC's *Further Notice of Proposed Rulemaking*,² AMTA's members have grappled with

¹ The Commission's action in this matter was initiated by the filing of AMTA's Petition for Rulemaking on October 26, 1992, requesting wide-area, block licensing of SMR systems.

² Amendment of Part 90 of the Commission's rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rulemaking*, 9 FCC Rcd ____ (1994)(FNPR).

No. of Copies rec'd
List ABCDE

082

the highly complex and controversial issues included in the FNPR. Throughout, AMTA has sought to find a licensing framework for this frequency band that strikes a balance among local and wide-area operators, equipment suppliers and the public served by the SMR industry.

The Association applauds the Bureau's similar efforts to provide balanced rules for this service. The licensing framework that is the subject of this presentation was outlined to industry representatives during a meeting at the FCC on September 18, 1995. The proposal appears to be at least loosely based on a discussion draft that was circulated within the industry, including to AMTA, in which consensus or compromise positions were described.

AMTA suggests the following modifications of the Bureau's proposal:

Protection of Incumbent Systems -- The Bureau's recommendation to the Commission would require protection of incumbent systems within their 40 dBu contours. AMTA urges the Bureau to modify that protection to the 22 dBu contour.

As the Bureau has consistently noted, the 800 MHz SMR band is highly congested, with little "white space" remaining between existing systems. In many cases, the system's actual coverage area may extend beyond its hypothetical 40 dBu service contour. Service providers generally have many customers that rely on interference-free communications within the operator's interference (22 dBu) contour.

AMTA realizes that the Bureau wishes to assign all remaining available spectrum to new, wide-area licensees. However, the area between incumbents' 40 dBu and 22 dBu contours is already occupied. It is not available for assignment to new licensees in accordance with long-standing FCC co-channel separation requirements. Failure to protect that coverage area will result in large numbers of interference disputes between wide-area licensees and incumbents, and the loss of reliable service to thousands of customers. AMTA therefore requests that the Bureau adopt a 22 dBu contour protection standard for incumbent systems.

Rights of Relocated Incumbent Operators -- During its November 18 meeting, the WTB stated that it has recommended mandatory retuning of incumbent operators following a one-year voluntary negotiation period. The Bureau emphasized that no retuning would occur unless "comparable spectrum" was available, and specifically requested additional comment on the definition of comparable spectrum during the mandatory relocation period. At a minimum, the WTB confirmed that relocated incumbents would be entitled to the same number of channels and the same coverage

area.

In its Reply Comments in this docket,³ AMTA outlined an "Incumbents' Bill of Rights" that sought to define comparable spectrum by guaranteeing certain equitable measures to all existing SMR licensees moving to other channels. While the legislative and regulatory environment has changed sufficiently to require minor modifications of AMTA's recommendations, the Association submits that these provisions should guide the Bureau's deliberations:

- ▶ Wide-area licensees must identify comparable spectrum and must be responsible for all reasonable costs of relocation, such as engineering, site, legal and equipment replacement where necessary.
- ▶ Wide-area licensees should be required to notify incumbents of their intent to relocate the incumbent sufficiently prior to retuning to minimize disruption to the incumbent's system and customers.
- ▶ Wide-area licensees should not be permitted to "selectively retune" the incumbent channels they wish to clear, but should be required to relocate all of the incumbent's channels within their licensed BEA channel block (this provision could be waived should the parties agree to other arrangements).
- ▶ Comparable spectrum must include the same number of channels, the same or a superior coverage area, as well as intra-system channel separation and co-channel separation comparable to that being retuned.
- ▶ Relocated incumbents should be provided 70-mile co-channel protection on the new channels wherever possible. Further, relocated incumbents should not be subject to further short-spacing of their systems in the future.
- ▶ Relocated incumbents should be exempt from any future relocation initiatives.

Relocation of 800 MHz SMR incumbents to new frequencies in this congested band will likely prove more complex and burdensome than the ongoing relocation of microwave incumbents in the broadband PCS frequency band. AMTA submits that the above measures will help to smooth the process, as well as provide that incumbents receive spectrum comparable to the channels they must vacate.

³ Filed March 1, 1995.

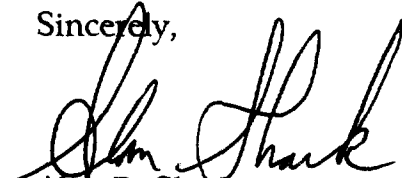
Small Business Credits -- AMTA requests that the Commission adopt bidding credits and installment payments for small businesses in its auction of the top 200 channels in the 800 MHz SMR band.⁴ The Association notes that the industry consistently has sought opportunities for small, incumbent operators to remain in the band and expand their service areas. The availability of a BEA-wide block license of 20 channels, as opposed to only one or two large channel blocks, would be consistent with those efforts. Such small blocks are likely to have lower price tags in the auction, keeping them within reach of the average incumbent licensee.

Due to the size of their businesses and the continuing uncertainty facing the industry, incumbent operators are finding it difficult to obtain financing that could be used to participate in an auction for a large channel block. At the same time, many licensees now operating in the upper 200 channels have a channel presence significant enough to prevent their relocation to another part of the 800 MHz band due to lack of available spectrum. These operators must participate in the wide-area auction if their businesses are to have a future. Only the bidding credits and installment payments available to small business participants in other auctions will enable them to compete. AMTA therefore urges the Bureau to recommend small business bidding credits and installment payments in the auction of the upper 200 channels of the SMR frequency band.

Conclusion

While AMTA may not agree with all of the WTB's licensing framework as presented, the Association acknowledges the Bureau's efforts to reach a balanced conclusion to this highly complex and controversial proceeding. To reflect the discussions of the industry and recognize the interests of all industry segments, AMTA urges the Bureau to modify its proposal consistent with the recommendations herein.

Sincerely,



Alan R. Shark
President & CEO

⁴ AMTA's position on the issue of minority- and gender-based auction preferences pursuant to the U.S. Supreme Court's decision in *Adarand v. Peña* was fully discussed in its comments, filed August 4, 1995, on the Bureau's Public Notice of July 25, 1995; therefore, it is not further discussed herein.